

# FEDERAL COMMUNICATIONS COMMISSION

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Real Presence Radio  
P.O. Box 13703  
Grand Forks, North Dakota 58208 - 1370

In re: KPHA(FM), Mandan, ND  
Real Presence Radio ("RPR")  
Facility ID No. 172316  
BMPED-20100513AAP

Dear Applicant:

This letter is in reference to the above-captioned minor change application filed to modify construction permit (BNPED-20071019BFH) for a new broadcast station.<sup>1</sup> The application proposes to decrease the effective radiated power (ERP) and the antenna height above average terrain (HAAT), at the existing transmitter site. RFR also requests waiver of the contour overlap provisions of Section 73.509. For the reasons stated below, we grant RFR's waiver request and the application.

## Waiver Request

An engineering review of the application reveals that it is in violation of 47 C.F.R. Section 73.509 with respect to second-adjacent channel Class A Station KBFR(FM), Bismarck, North Dakota. Specifically, KPHA's proposed protected contour (60 dBu) will receive prohibited contour overlap from KBFR's second-adjacent interfering contour (100 dBu). RFR acknowledges the proposed overlap received from KBFR and requests waiver of Section 73.509 of the Rules.

In support of the waiver request, RFR states that it will not cause interference to KBFR. RFR claims that the total area of overlap constitutes less than 0.1% of the total area served within KPHA's proposed 60 dBu protected contour. In addition, RFR states that the proposed facilities would increase its overall coverage area to 3,976 square kilometers (a 9 % increase). Furthermore, RFR indicates that the proposed KPHA facilities will provide service to an estimated 87,511 people, increasing its coverage by 72%. Finally, RFR cites *Educational Information Corporation*, 6 FCC Rcd 2207 (1991), as evidence of the Commission's willingness to consider waivers of overlap received. Moreover, RFR believes that the overlap proposed here is *de minimis* and, when considered along with the increased service area, concludes that a waiver of Section 73.509 of the Rules is warranted in this case.

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<sup>1</sup> RPR's authorization, file No. BNPED-20071019BFH was granted 2-28-2010.

## Discussion

RFR's request to receive second-adjacent channel overlap is similar to the request submitted by WCPE(FM), Raleigh, NC in *Educational Information Corporation, supra*. In the case it was stated that:

The Commission has long recognized the unique characteristics of the noncommercial service and the need for flexibility to respond to the growing demand for such service.

We are also more sensitive today to the increasing limitations within the reserved band which reflect the increased demand for service over the last 30 years. For these reasons, we are now inclined to grant waivers of second or third adjacent channel overlap in circumstances such as WCPE's, where the benefit of increased noncommercial educational service so heavily outweighs the potential for interference in very small areas. However, because of the concern for the ability of the stations causing interference to make any future changes in their own facilities, as discussed below, we believe that the waiver of interference received must be granted with the acknowledgement that future modifications proposed by the affected licensees will not be construed as a *per se* modification of the waiver recipient's license.

Accordingly, in light of the Commission's policy on this matter, the requested waiver of Section 73.509 of the Rules will be granted.

## Conclusion

We have afforded the request for waiver of Section 73.509 of the Rules the "hard look" called for under *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), and find that the facts and circumstances presented in the applicant's justification are sufficient to establish that grant of the requested waiver would be in the public interest. Accordingly, KPHA(FM)'s request for waiver of Section 73.509 of the Rules IS HEREBY GRANTED. Furthermore, application File No. BMPED-20100513AAP IS HEREBY GRANTED subject to the following condition:

Further modifications to the facilities of station KBFR(FM), Bismarck, North Dakota (Facility ID # 90269) will not be construed as a *per se* modification of KPHA(FM)'s authorization.

(See *Educational Information Corporation*, 6 FCC Rcd. 2207 (1991)).

The authorization is enclosed. These actions are taken pursuant to Section 0.283 of the Commission's Rules.<sup>2</sup>

Sincerely,



Rodolfo F. Bonacci  
Assistant Chief  
Audio Division  
Media Bureau

cc: Dennis J. Kelly, Esq.

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<sup>2</sup> See 47 CFR § 0.283